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Supreme Court of the United States

MICHAEL GOLIGHTLY, JOE CARTER, W. HAYS GILSTRAP, JOE MELTON, SUE E. CHILTON, LINDA MELKER and DUANE R. SHROUFE,

Petitioners,

v.

LAWRENCE MONTOYA, FILIBERTO VALERIO, and CAROLE JEAN TAULMAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF MONTANA, ALASKA, ALABAMA, ARKANSAS, COLORADO, DELAWARE, IDAHO, INDIANA, KANSAS, KENTUCKY, MINNESOTA, NEVADA, NEW MEXICO, NORTH DAKOTA, OREGON, THE COMMONWEALTH OF PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, AND WYOMING AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

MIKE MCGRATH
Attorney General of Montana
BRIAN M. MORRIS*
Solicitor
Department of Justice
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026

**Counsel of Record*

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

48pp

GREGG D. RENKES
Attorney General of Alaska
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-2133

WILLIAM H. PRYOR JR.
Attorney General of Alabama
11 South Union Street
Montgomery, AL 36130
(334) 242-7300

MARK PRYOR
Attorney General of Arkansas
323 Center Street, Suite 1100
Little Rock, AR 72201
(501) 682-2081

KEN SALAZAR
Attorney General of Colorado
1525 Sherman Street, 7th Floor
Denver, CO 80203
(303) 866-3557

M. JANE BRADY
Attorney General of Delaware
820 N. French Street
Wilmington, DE 19801
(302) 577-8400

ALAN G. LANCE
Attorney General of Idaho
P.O. Box 83720
Boise, ID 83720-0010
(208) 334-2400

STEVE CARTER
Attorney General of Indiana
Indiana Government Ctr. – South
5th Floor
402 West Washington St.
Indianapolis, IN 46204
(317) 232-6201

KARLA J. STOVALL
Attorney General of Kansas
120 S.W. 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
(785) 296-2215

ALBERT B. CHANDLER III
Attorney General of Kentucky
The State Capitol, Suite 120
Frankfort, KY 40601
(502) 696-5622

MIKE HATCH
Attorney General of Minnesota
102 State Capitol
St. Paul, MN 55155
(651) 296-6196

FRANKIE SUE DEL PAPA
Attorney General of Nevada
Carson City Office
100 North Carson Street
Carson City, NV 89701-4717
(775) 684-1100

PATRICIA A. MADRID
Attorney General of New Mexico
111 Lomas Blvd NW Suite 300
Albuquerque, NM 87102
(505) 222-9085

WAYNE STENEHJEM
Attorney General
of North Dakota
600 E. Boulevard Avenue
Bismarck, ND 58505-0040
(701) 328-2210

HARDY MYERS
Attorney General
of Oregon
1162 Court Street N.E.
Salem, OR 97301
(503) 378-6002

D. MICHAEL FISHER
Attorney General
Commonwealth
of Pennsylvania
16th Floor,
Strawberry Square
Harrisburg, PA 17120
(717) 787-3391

CHARLES M. CONDON
Attorney General
of South Carolina
P.O. Box 11549
Columbia, SC 29211
(803) 734-3680

MARK BARNETT
Attorney General
of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
(605) 773-3215

PAUL G. SUMMERS
Attorney General
of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-6422

MARK L. SHURTLEFF
Utah Attorney General
236 State Capitol
Salt Lake City, UT 84114
(801) 538-9600

WILLIAM H. SORRELL
Attorney General
of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3173

HOKE MACMILLAN
Attorney General of Wyoming
123 State Capitol
Cheyenne, WY 82002
(307) 777-7242

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REASONS FOR GRANTING THE WRIT

Three compelling reasons support granting Arizona's petition for certiorari. First, the Ninth Circuit's decision conflicts with decisions of other courts that have rejected Commerce Clause challenges to a State's restrictions on non-resident hunting permits. Next, the Ninth Circuit improperly extends application of the dormant Commerce Clause from those statutes that directly affect interstate commerce to those statutes that have a "substantial effect" on interstate commerce. The Ninth Circuit's unwarranted extension triggers application of strict scrutiny to Arizona's restrictions. And most importantly, the Ninth Circuit's application of strict scrutiny analysis under the dormant Commerce Clause to Arizona's resident preferences in its allocation of recreational hunting permits imperils the continued ability of Amici States to conserve, promote, and develop wildlife populations within their borders. The Amici States employ similar resident preferences in allocation of recreational hunting permits and urge the Court to grant Arizona's petition for certiorari.

I. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE DECISION OF THE ALASKA SUPREME COURT AND OTHER FEDERAL COURTS THAT HAVE ADDRESSED RESTRICTIONS ON NON-RESIDENT HUNTING PERMITS.

The Ninth Circuit's decision directly conflicts with the decision of the Alaska Supreme Court in *Shepherd v. Alaska*, 897 P.2d 33 (Alaska 1995), and the federal district courts in *United States v. Romano*, 929 F. Supp. 502 (D. Mass. 1996), and *Terk v. Ruch*, 655 F. Supp. 205 (D. Col.

1987), in which all three courts expressly rejected Commerce Clause challenges to restrictions on non-resident hunting permits. The Ninth Circuit's decision also stands in serious tension, if not in direct conflict, with the decision of the Tenth Circuit in *Clajon Production Corp. v. Petera*, 70 F.3d 1566 (10th Cir. 1995) (finding that Wyoming's licensing scheme that granted a preference to resident hunters over non-resident hunters was not facially discriminatory for purposes of Commerce Clause analysis).

A. *Shepherd*

In *Shepherd*, Alaska big game hunting guides alleged that restrictions on moose hunting by non-residents violated the Commerce Clause. *Shepherd*, 897 P.2d at 35. Alaska's restrictions did not regulate professional guiding, but, as the court determined, instead directly related to "the taking of wild game, which does not affirmatively discriminate against interstate commerce." *Id.* at 42. As a result, the court found any effect that the restrictions may have on the hunting guides' business – clearly an activity qualifying as interstate commerce – to be only "incidental" and thereby not outweighing the local benefits in protecting the wildlife population. *Id.* The court rejected the very argument adopted by the Ninth Circuit – that the interstate transportation of hunters implicated the Commerce Clause (Petrs.' App. at 14). The court declared that the interstate transportation of hunters to and from Alaska represented "only an incidental effect on interstate commerce" and therefore subjected Alaska's restrictions only to deferential review. *Shepherd*, 897 P.2d at 43 n.7. Thus, the court concluded that the state's asserted purpose of the resident preferences as conserving scarce wildlife resources

for Alaska residents represented a ligitimate state interest. *Id.* at 43.

B. *Romano*

Likewise, in *Romano*, the court summarily dismissed the notion that any law that incidentally burdened the interstate transportation of recreational hunters to and from Alaska required application of strict scrutiny under a Commerce Clause analysis. Romano, a Massachusetts resident charged with violating the Lacey Act, sought to dismiss the indictment based on the fact that Alaska's restrictions on non-resident hunting permits violated the Commerce Clause. *Romano*, 929 F. Supp. at 504. The Lacey Act violations stemmed from Romano's transportation of wildlife trophies from Alaska to Massachusetts that he had taken with an Alaska resident hunting permit. *Id.* Romano had provided false information to obtain an Alaska resident hunting permit. *Id.* The court refused to apply strict scrutiny to Alaska's restrictions on non-resident hunting permits due to the fact that "[r]ecreational hunting is not commerce." *Id.* at 509. The court further noted that "even assuming that Alaska's law somehow indirectly burdens interstate commerce – by, say, discouraging a small number of prospective recreational hunters from coming to the state – it still passes constitutional muster." *Id.* The restriction on non-resident hunting permits clearly represented a reasonable means of protecting a scarce natural resource. *Id.*

C. *Terk*

A Texas resident in *Terk* sought to enjoin Colorado hunting regulations that allocated 90 percent of the

available bighorn sheep and mountain goat permits to Colorado residents on the ground that the regulations violated the Commerce Clause. *Terk*, 655 F. Supp. at 206. The court rejected the Commerce Clause claim, in large part, due to the fact that wildlife is not commerce and thereby distinguished Colorado's regulations from commercial livelihood cases, such as *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (striking down Oklahoma statute that prohibited the transport of minnows out of state for purposes of sale on the ground that the minnows were articles of commerce). *Terk*, 655 F. Supp. at 215. Colorado's prohibition on the sale of the edible portions of wildlife confirmed the fact that wildlife did not qualify as articles of commerce. *Id. Cf. Terk v. Gordon*, No. 74-387-M (D. N.M. 1977), *aff'd*, 436 U.S. 850 (1978) (striking down New Mexico's restriction on the number on non-resident hunting permits on equal protection grounds).

D. *Clajon Production Corp.*

Finally, in *Clajon Production Corp.*, 70 F.3d at 1559, a group of Wyoming ranchers who offered hunting services to non-residents challenged Wyoming's hunting regulations on a variety of grounds, including the Commerce Clause, the Takings Clause, and the Equal Protection Clause. The court dismissed the ranchers' Commerce Clause claim for lack of standing as the ranchers failed to establish that the regulations interfered with their ability to provide commercial hunting services to non-residents. *Id.* at 1571-73. The court did reach the merits on the takings claim and the equal protection claim, however, and rejected both. With respect to the equal protection claim, the court applied rational basis scrutiny and found the regulations to represent a reasonable attempt by Wyoming

to balance its conservation policies and the desire to offer its citizens an opportunity to hunt. *Id.* at 1581.

The Ninth Circuit's decision clearly conflicts with the decisions of these other courts with respect to whether restrictions on non-resident hunting permits constitute invidious discrimination, thereby triggering strict scrutiny or whether such restrictions should be subject to more deferential review. The issue turns in large measure on whether recreational hunting constitutes commerce and whether the statute's application to the interstate transportation of prospective hunters to and from a state directly affects interstate commerce and subjects the statute to strict scrutiny. The courts in *Shepherd*, *Romano*, and *Terk* rejected the notion that recreational hunting qualifies as commerce and found that any effect on interstate commerce posed by the transportation of prospective hunters to and from a state to be only incidental and, therefore, subject to more deferential review. The Ninth Circuit, of course, found that such an incidental effect nevertheless triggered strict scrutiny and remanded the case to the district court to allow Arizona an opportunity to present evidence that its restrictions on non-resident hunting permits represents the sole means of advancing its legitimate state interests. Petrs.' App. at 25. Neither Arizona nor the Amici States likely could meet this burden and the Court should grant Arizona's petition for certiorari to decide whether they must.

II. THE NINTH CIRCUIT IMPROPERLY EXTENDS DORMANT COMMERCE CLAUSE ANALYSIS FROM THOSE STATUTES THAT DIRECTLY AFFECT INTERSTATE COMMERCE TO THOSE THAT ONLY INCIDENTALLY BURDEN INTERSTATE COMMERCE.

In reaching its decision that Arizona's cap on nonresident permits violated the dormant Commerce Clause, the Ninth Circuit improperly extends dormant Commerce Clause analysis from those statutes that directly affect interstate commerce to those that only incidentally burden interstate commerce. Petrs.' App. at 14. The dormant Commerce Clause historically has been used to prohibit two forms of State conduct: (1) a State law that favors or protects in-state over out-of-state commerce, *see, e.g., West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994) (striking down Massachusetts subsidy law that distributed assessment on sale of all liquid milk sold only to Massachusetts dairy farmers), and (2) a State law that controls prices or behavior in other states. This "negative" aspect of the Commerce Clause prohibits economic protectionism through regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988).

A. Courts Historically Have Recognized that Recreational Hunting Constitutes a Matter of Legitimate Local Concern.

Despite the apparent broad sweep of the dormant Commerce Clause, the Court has found that "the States retain authority under their general police powers to regulate matters of legitimate local concern, even though

interstate commerce may be affected." *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (upholding Maine's prohibition on the importation of live baitfish). A State's regulation of recreational hunting and the promotion and protection of its wildlife populations represent matters of legitimate local concern. *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 377, 388 (1978) (rejecting Privileges and Immunities challenge to Montana statutory elk-hunting licensing scheme which imposed license fees on non-residents more than 7-½ times than those imposed on residents).

In fact, numerous courts have taken the next step and expressly concluded that wildlife does not constitute "commerce" for purposes of analysis under the negative Commerce Clause. *See, e.g., Shepherd*, 897 P.2d at 42 ("We therefore affirm the superior court's conclusion that unharvested game is not an article of commerce."); *Terk*, 655 F. Supp. at 215 ("Sheep and Goat are not commerce"); *Romano*, 929 F. Supp. at 509 ("Recreational hunting is not commerce"). Similarly in *Tangier Sound Watermen's Ass'n v. Douglas*, 541 F. Supp. 1287, 1306 (E.D. Va. 1982), the court declared that "plaintiffs have not established that unharvested crabs are articles of commerce." The fact that most states prohibit the sale of the edible parts of wildlife supports this conclusion. *See* Petrs.' App. at 80-89.

B. The Ninth Circuit's Recognition of the Transportation of Prospective Hunters to and from Arizona as Substantially Affecting Interstate Commerce Threatens to Extinguish Intrastate Commerce.

Nevertheless, the Ninth Circuit ignores the historical recognition that wildlife fundamentally constitutes a matter of local interest and instead reads *Camps Newfound/*

Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1996), as extending application of the dormant Commerce Clause from those state statutes and regulations that regulate articles of commerce themselves or directly affect interstate commerce, to those statutes and regulations that only incidentally burden interstate commerce. Petrs.' App. at 13. The Ninth Circuit analogizes the interstate transportation of people who attend summer camps in Maine, found to have a substantial effect on interstate commerce in *Camps*, 520 U.S. at 574, to the interstate transportation of hunters to and from Arizona. Petrs.' App. at 13.

The courts in *Shepherd*, 897 P.2d at 43 n.7 and *Romano*, 929 F. Supp. at 509, expressly rejected this notion with respect to the interstate transportation of prospective hunters in direct conflict with the Ninth Circuit's analysis. Moreover, under the Ninth Circuit's analysis, the student who crosses state lines to attend a state university and pays non-resident tuition would be an article of commerce. *Cf. Johns v. Redeker*, 406 F.2d 878 (8th Cir. 1969) (dismissing challenge by non-resident students to Iowa's preferential tuition scheme); *Vlandis v. Kline*, 412 U.S. 441, 452 (1973) (recognizing a State's legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis). The Court in *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 253 (1938), previously rejected the argument that a business carried on entirely intrastate can be converted to an interstate business simply because customers from out-of-state are induced to patronize the business. Intrastate commerce would cease to exist if the non-resident hunters' choice to cross state lines to

hunt in Arizona transformed recreational hunting into an article of interstate commerce. *See Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 1135 (1995) (holding that sale of ticket for interstate bus travel constitutes a local transaction and there is no requirement that tax on that sale be apportioned).

C. The Ninth Circuit Mistakenly Assumes that Arizona's Legalization of Antler Sales Distinguishes the Regulations From Those Upheld in *Baldwin*.

Remarkably, the Ninth Circuit goes one step further and finds that Arizona's restrictions on non-resident permits "substantially affects the interstate flow of goods in commercial markets." Petrs.' App. at 13. Non-edible portions of wildlife, such as antlers, constitute the "goods" to which the Ninth Circuit refers. In doing so, the Ninth Circuit incorrectly distinguishes *Baldwin* by finding that the hunting regulated by Arizona's cap on non-resident permits goes beyond hunting conducted for recreational or subsistence purposes (and includes the sale of antlers) and thereby "differs from Montana's regulations at issue in *Fish & Game Comm'n*." Petrs.' App. at 14. Montana law, in effect at the time of the Court's decision in *Fish & Game Comm'n* and still true today, however, permits non-edible portions of bull elk and antlered deer taken from lands to be sold in interstate and international markets. Mont. Code Ann. § 87-3-111(2)(b), (d); Petrs.' App. at 80-89.

The Ninth Circuit relies upon this non-existent distinction between the sale of antlers in Montana and Arizona to conclude that Arizona's non-resident limit burdens interstate commerce at its point of supply by disadvantaging non-resident hunters who seek to engage

in the commercial activity of selling non-edible portions of bull elk and antlered deer. Petrs.' App. at 14. Thus, the Ninth Circuit likens Arizona's non-resident limit on hunting permits to impermissible regulations on the commercial harvest of other natural resources, such as natural gas, *West v. Kansas Natural Gas Co.*, 221 U.S. 229 (1911), and fish, *Foster Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928). Petrs.' App. at 14-15. Absent this non-existent distinction regarding the sale of antlers between the Arizona restrictions at issue here and the Montana regulations at issue in *Baldwin*, however, the Ninth Circuit's logic runs squarely into the long line of cases holding that recreational hunting does not qualify as interstate commerce and that wildlife does not constitute an article of commerce. *See, e.g.*, *Shepherd*, 897 P.2d at 42; *Terk*, 655 F. Supp. at 215; *Romano*, 929 F. Supp. at 509.

The Ninth Circuit's reliance on this non-existent distinction regarding the sale of antlers unnecessarily calls into question similar laws currently enforced by numerous Amici States and compels this Court to grant Arizona's petition for certiorari to clarify once again that a State's management of its wildlife resources represents a matter of legitimate local concern. *Baldwin*, 436 U.S. at 377, 388. As a matter of legitimate local concern, Arizona and the Amici States retain authority under their general police powers to regulate recreational hunting, "even though interstate commerce may be affected." *Taylor*, 477 U.S. at 138. The Ninth Circuit's clear error in distinguishing *Baldwin* based on Arizona's legalization of antler sales highlights the problems created by the court's application of strict scrutiny under its Commerce Clause analysis to Arizona's "restrictions" on the transportation of prospective hunters to and from Arizona.

III. APPLICATION OF STRICT SCRUTINY ANALYSIS TO RESIDENT PREFERENCES IN RECREATIONAL HUNTING THREATENS THE AMICI STATES' CONTINUED ABILITY TO REGULATE BIG GAME HUNTING IN A MANNER THAT CONSERVES AND PROMOTES THEIR WILDLIFE POPULATIONS.

The Ninth Circuit's decision to find free-ranging wildlife to constitute, in effect, an article of commerce for purposes of analyzing Arizona's ability to regulate the sale of hunting permits to non-residents threatens the States' ability to conserve, promote, and develop wildlife populations within their borders, a function traditionally seen as a State's legitimate use of its police power. *Taylor*, 477 U.S. at 138 (upholding Maine's prohibition on the importation of live baitfish). Wildlife, by their very nature, roam freely across the United States with no recognition of, or respect for, state boundaries.

Currently, the laws of Arizona and at least twenty-three other States impose limits on non-resident hunting permits. Amici's App.; *see also Terk*, 655 F. Supp. at 207 (noting that "the practice of discriminating against non-residents in the application of hurting licenses is widespread"). These limits range from percentage caps on the number of non-resident hunting permits issued (Kansas: 10 percent of resident deer permits sold in the previous year), to absolute caps on the number of non-resident hunting permits issued (Montana: non-resident elk hunters limited to 17,000 elk tags), to complete prohibitions on non-resident permits for certain species (Alaska: non-residents prohibited from subsistence hunting and fishing). *See* Amici's App. at A.2, A.8, and A.14.

The court in *DeMasters v. State of Montana*, 656 F. Supp. 21 (1986) (upholding Montana's cap on the number of non-resident hunting permits issued) acknowledged "the sacrifice which Montana residents have apparently made in foregoing development in order to preserve wildlife habitat, clean air, and water." *DeMasters*, 656 F. Supp. at 25. The court recognized that without such sacrifices by Montana residents, "survival of the elk herds would be in jeopardy" and that non-residents do not share the burden. *Id.* The Amici States also have foregone development opportunities in order to preserve their own wildlife habitat, clean air, and water. In return for bearing these sacrifices, the Amici States have compensated their residents by taking reasonable steps to ensure that recreational hunting opportunities will be available to them. Despite these sacrifices, the Ninth Circuit views the steps taken by Amici States as impermissible burdens on interstate commerce.

Finally, even more states – at least thirty-two – impose a greater fee on some non-resident hunting permits than the fee imposed on residents. Amici's App. These differential fees for non-residents can run as much as twelve times the resident fee (Alaska and Idaho) for those states well known for big game hunting. *Id.* at A.2 and A.7. Even for states less often associated with big game hunting, the fee differential can be substantial, approaching ten-fold differences in Iowa and Louisiana. *Id.* at A.7-A.8 and A.10-A.11.

Serious questions arise as to whether such fee differentials could survive the strict scrutiny applied by the Ninth Circuit to Arizona's cap on non-resident hunting permits. *See, e.g., Oregon Waste Systems, Inc. v. Department of Environmental Quality*, 511 U.S. 93 (1994) (applying "strictest scrutiny" in striking down on Commerce

Clause grounds Oregon statute that imposed a $2.25 per ton surcharge on the disposal of out-of-state waste compared with $0.85 per ton surcharge on the disposal of waste generated in-state). As noted by the court in *DeMasters*, differential fees and limits on non-resident hunting permits remain vital to the conservation and development of wildlife throughout our Nation.

CONCLUSION

For the foregoing reasons, the State of Arizona's petition for certorari should be granted.

Respectfully submitted,

MIKE MCGRATH
Attorney General of Montana
BRIAN M. MORRIS *
Solicitor
Department of Justice
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-2026
(406) 444-3549 Facsimile

* *Counsel of Record*

State	Limits on Nonresident Hunting	Nature of Nonresident Hunting Restriction Generally	Fee for Nonresident greater than Resident for Some or All Licenses
Alabama			**Yes.** Resident and nonresident licenses not always comparable. Fee Examples: • Resident Annual State Hunting License $15 • Nonresident "small game only" hunting license (excludes deer and turkeys) $75 Code of Ala. § 9-11-46 (2002) • Nonresident "all game hunt" license $250 Code of Ala. § 9-11-47 (2002)

Alaska	Limits	• Nonresidents prohibited from subsistence hunting and fishing. ALASKA STAT. §§ 16.05.258 and 16.05.940 (31) (2002). • Residents have priority over nonresidents for taking of elk, deer, moose and caribou for personal and family consumption. Therefore seasons and bag limits for these animals set more liberally for residents. Nonresidents compete for limited permits. Resi-	**Yes.** Resident and nonresident licenses are not comparable.* Fee examples: • Resident hunting license $25. • Nonresident hunting license $85. • Only resident hunting license listed as a requirement for residents to take an elk.

* In some states the licenses offered to nonresidents are different that those offered to residents. For example, in Montana a resident may purchase only an elk tag with purchase of a conservation license (conservation license required for anyone to hunt or fish), but a nonresident may only purchase an elk tag if the nonresident purchases a nonresident combination license which includes a conservation license, elk, fishing, upland game bird and a deer A tag. In other states, a nonresident may have to purchase a nonresident general hunting license or pay an application fee that a resident was not required to pay. When resident and nonresident licenses were generally not comparable, the few that were comparable or similar were used as examples.

		dents do not. ALASKA STAT. §§ 16.05.255 (d) (2002).	• Nonresident elk tag $300. • Resident brown or grizzly bear tag $25. • Nonresident brown or grizzly bear tag $500. • Resident hunting and sport fishing license $39. • Nonresident 14 day sport fishing license $50. ALASKA STAT. §§ 16.05.340 (a) (1) though (15) (2002).
Arizona	Limits	• Nonresidents limited to no more than 10% of available bighorn sheep and buffalo tags and more than 50% or 2 bighorn sheep or buffalo tags in any hunt number. ARIZ. ADMIN. CODE R12-4-114 (D). • Nonresidents limited to no more	**Yes.** Licenses available to residents and nonresidents are comparable. Fee examples: • Resident combination hunting and fishing license $44.

		than 10% of all bull elk permits for all hunts. ARIZ. ADMIN. CODE R12-4-114 (E). • Nonresidents limited to no more than 10% of antlered deer north of Colorado River for all hunts. ARIZ. ADMIN. CODE R12-4-114 (E).	• Nonresident combination hunting and fishing license $177.50. • Resident elk license $71.50. • Nonresident elk license $366. ARIZ. ADMIN. CODE § R12-4-102 (2002).
Arkansas	Limits	• Limits number of elk permits drawn annually. Only residents may apply for the limited permits drawn in public land zones. • Nonresidents may obtain a permit in certain "private land" elk zones if nonresident demonstrates that he/she has permission to hunt on the land. • Does not limit nonresident permits for other hunting when there is no limit on the number of total	**Yes.** Not all licenses available to residents are available to nonresidents. Fee example: Resident trout permit $5. • Nonresident trout permit $9. • Resident Comb. Sportsman license $35. • Nonresident Annual • All Game License

		permits issued. CHAPTER 3 ARK. CODE OF FISH AND GAME REG. § 03.14.	$225. CHAPTER 3 ARK. CODE OF FISH AND GAME REG. § 03.14 (2002).
California	Limits	By regulation limits to residents the issuance of license tags for pronghorn antelope and elk. Cal. Code Regs.., title 14, §§ 363, sub(k)(1), 364, sub(I)(1).	
Colorado	Limits	• 10% of a limited number of licenses for moose, bighorn sheep, and mountain goats may be sold to nonresidents. • 40% of a limited number of licenses for deer, elk, and antelope are available for use by nonresidents. • If resident demand is less that 90% and 60%, respectively for the above licenses, nonresidents can access leftover licenses. Colorado Wildlife Commission Policy	**Yes**. Most resident and nonresident comparable. Not all licenses available to residents are available to nonresidents. Fee examples: • Resident elk $30. • Nonresident elk $450. • Resident deer $20. • Nonresident deer $270. COLO. REV. STAT. § 33-4-102 (1.4) (o) and (p) (2002).

Connecticut	None	• Nonresident shall not be issued a license to take lobsters or crabs if the nonresident's state laws are less restrictive concerning taking of lobsters than Conn.Gen Stat. § 26-157(c). 2002 Conn. Pub. Acts 02-1 May 9 Special Session, House Bill No. 6002 Section, 101 (c).	**Yes.** Nonresidents of New England states or New York may hunt paying resident fees if nonresident state has reciprocal statutes in place. Resident and nonresident licenses fairly comparable. Not all licenses available to residents are available to nonresidents. Fee examples: • Resident firearms deer $14. • Nonresident firearms deer $50. • Resident season fishing $20. • Nonresident season fishing $40. 2002 Conn. Pub. Acts 02-1 May 9 Special Session,

			House Bill No. 6002, Sections 89 through 102.
Idaho	Limits	• Limits number, kind and class of licenses sold to nonresidents. For example, the Commission can limit the number of deer and elk tags sold to nonresidents. IDAHO CODE § 36-406 (2) and (3) (2002). IDAPA 13.01.04.600.01 (2002). • Can prohibit or limit to 10% nonresident participation in controlled hunts. All hunts for antelope, moose, bighorn sheep, and mountain goats controlled. Some of the hunts for elk, deer, black bear, sandhill crane, turkey, and early season goose are controlled. IDAPA 13.01.09.100, 13.01.08.260.02 and 13.01.09.615 (2002)	**Yes.** Some nonresident and resident licenses are comparable. Not all licenses available to residents are available to nonresidents. Fee examples: • Resident elk tag $27. • Nonresident elk tag $337. • Resident deer tag $16.50. • Nonresident deer tag $233.50. IDAHO CODE § 36-416 (b) (2002).
Iowa	Limits	• Nonresident limits on deer: the number taken, firearms used, type	**Yes.** Licenses available to nonresidents not always

		of deer (antlerless/antlered). • Nonresident limits on turkey. • Nonresidents owning land in Iowa have preference over other non-residents in obtaining antlerless deer licenses. IOWA CODE § 483A.8 (2002).	comparable with licenses available to residents.* Fee examples: • Resident deer license $25.50. • Nonresident deer license, antlered or any sex $220. • Resident wild turkey license $22.50. • Nonresident wild turkey license $100. IOWA CODE § 483A.1(1) (e) and (f), and (2) (e) and (g) (2002).
Kansas	Limits	• Nonresidents limited to 10% of resident deer permits by class sold in the previous year. KAN. STAT. ANN. § 32-937 (m) (2001). • Mule deer by draw and whitetail either-sex permits for residents	**Yes.** Some nonresident and resident licenses are comparable.* Not all licenses available to residents are available to nonresidents. Fee examples:

		only. KAN. STAT. ANN. § 32-937 (2001).	• Resident big game (other than elk) $100. • Nonresident big game (other than elk) $400. KAN. STAT. ANN. § 32-988 (a) (2001). • Resident fishing license $18. • Nonresident fishing license $40. KAN. ADMIN. REGS. 115-2-1 (b) (2002).
Kentucky	Limits	Nonresidents limited only on elk quota hunt. No more than 10% of nonresidents may participate in the hunt. 301 KY. ADMIN. REGS. 2:132 (2002).	**Yes.** Licenses available to residents and nonresidents are comparable. Nonresidents rate is the same as resident on some licenses. Fee examples: • Resident deer permit $25.

			• Nonresident deer permit $25. • Resident statewide annual fishing license $15. • Nonresident statewide annual fishing license $35. • Statewide resident hunting license $15 • Statewide nonresident hunting license $115. 301 KY. ADMIN. REGS 3:022 (2002).
Louisiana	None		**Yes.** Some Resident and nonresident licenses are comparable. Not all permits available to residents are available to nonresidents. Fee examples:

			• Resident basic hunting license (excluding deer and turkey) $15. • Nonresident basic hunting license (excluding deer and turkey) $150. • Resident big game 5 day (required of all deer and turkey hunters in addition to basic license) $14. • Nonresident big game 5 day (required of all deer and turkey hunters in addition to basic license) $75. LA. REV. STAT. ANN § 56:104 (2002). 2002-2003 Louisiana Hunting License Information

			at www.wlf.state.la.us, see license requirements.
Maine	Limits	• Nonresidents limited in number of moose, deer, and turkey permits issued. ME. REV, STAT. ANN. TIT. 12 §§ 7457, 7463, and 7468	**Yes.** Licenses available to residents and nonresidents comparable. Application fees for permits for non-residents generally twice as much as for residents. Fee examples: • Resident moose license $50. • Nonresident moose license $475. 2002 Me. Laws 690, part A, section A-10. • Resident turkey license $10. • Nonresident turkey license $40. 2002 Me. Laws 655, section 5.

Maryland	None		**Yes.** Fees for resident and nonresident licenses differ. Fee Examples: • Resident Licenses $24.50 • Non resident basic full season license $130 Md. Nat. Res. Code Ann. § 10-301.
Minnesota	Limits	Permits for moose and elk available to residents only. Minn. Stat. 97A.431 subd. 2; 97A.433 subd. 2	**Yes.** Fees for resident and nonresident licenses differ. Fee Examples: • Resident Small Game License $12 • Nonresident Small Game License $73 • Resident Deer License $125 • Nonresident Deer License $125

			Minn. Stat. 97A.475 subd. 2, subd. 3.
Montana		• Nonresident elk hunters limited to approximately 17,000 elk tags sold in nonresident big game combination licenses. MONT. CODE ANN. §§ 87-1-268 and 87-2-505 (2002) • Nonresidents limited to approximately 6,600 deer tags sold in nonresident deer combination licenses. MONT. CODE ANN. §§ 87-1-268, 87-2-510, and 87-2-511 (2001). • Nonresident upland bird hunters are limited to 11,000 licenses pursuant to MONT. ADMIN. R. 12.9.305, Eff. July 20, 2001, MONT. CODE ANN. § 87-2-402 (2001). For the one year the rule has been in effect demand has been less than the limitation. Also, residents are	**Yes.** Some Resident and nonresident licenses are comparable. Other licenses are not comparable. Not all permits available to residents are available to nonresidents. Fee examples: • Resident moose, bighorn sheep and goat license $75. • Nonresident moose, bighorn sheep and goat license $750. MONT. CODE ANN. § 87-2-701 (2001). • Resident combination (includes fishing, upland game bird, deer A tag and elk) $54.

		allowed to start hunting 2 days before nonresidents. • Nonresidents limited to 10% of any limited drawing for moose, bighorn sheep, mountain goat, elk, deer, and antelope. MONT. CODE ANN. § 87-2-506 (2) (2001). • Number of nonresident lion hunters may be restricted in region 1 (northwest portion of Montana). MONT. CODE ANN. § 87-1-301 (6) (2001).	MONT. CODE ANN. § 87-2-711) (2001). • Nonresident big game combination license, same as resident combination license above) $625. MONT. CODE ANN. § 87-2-505 (2001).
Nebraska	Limits	Permits for bighorn sheep and elk available to residents only. Neb. Rev. Stat. § 37.450 (2002)	**Yes.** The Nebraska Game and Parks Commission sets hunting license and permit fees. Nonresident license and permit fees are higher in nearly all cases. Neb. Rev. State. § 37-327 (2002).

Nevada	Limits	• Number of nonresident tags sold restricted to 10% of mule deer, 5% of elk, 5% of antelope, 10% of bighorn sheep for each subspecies and 0% of mountain goats. Board of Wildlife Commissioners Policy Number 20. Big Game Quota Allocation, reference NRS 501.181, Approved June 16, 2001.	**Yes.** Not all licenses available to residents are available to nonresidents. Fee examples: • Resident deer tag for regular season $15. • Nonresident deer tag for regular season $60. • Resident elk tag $100 • Nonresident elk tag may not exceed $1000. NEV. REV. STAT. § 502.250 (1) and (2) (2002)
New Hampshire	Limits	• The total number of moose permits limited. • Permits are drawn • Nonresidents restricted to the same number of moose permits allowed them in the previous year. N.H. CODE ADMIN. R. ANN. FIS	**Yes.** Nonresident and resident licenses not always comparable. • Resident moose permit $100. • Nonresident moose permit $300.

		301.09 (i)(2) (a) through (e) and (f) (2002).	N.H. CODE ADMIN. R. ANN. FIS 1102.21 (a) and (b) (2002). • Resident hunting and fishing license $39. • Nonresident hunting fishing license $125. N.H. REV. STAT. ANN § 214.9 (2002).
North Carolina	None		**Yes.** Fees for some resident and nonresident licenses differ. Fee Examples: • Resident Big Game Hunting license $10. • Nonresident Big Game Hunting License (does not include bear or wild boar) $60 • Nonresident Bear/Wild Boar Hunting License $125

			N.C. Gen. Stat. § 113.270.3 (2002)
North Dakota	Limits	• Residents only may be issued moose, elk, wild turkey, and pronghorn permits. N.D. CENT. CODE §§ 20.1-04-07, 20.1-08-04.2 and 20.1-08-04.6 • Number of nonresident permits issued limited on deer, bighorn sheep, waterfowl and furbearer. For example 10% of licenses in each deer hunting unit may be sold to nonresidents. N.D. CENT. CODE § 20.1-03-11(4) and(10); 20.1-08.04 and 20.1-08.04.1; and 20.1-08.01. • Nonrefundable application fee of $100 charged to nonresidents for bighorn sheep. N.D. CENT. CODE § 20.1-03-12.2.	**Yes.** Nonresident and resident licenses fairly comparable, but not all licenses available to residents are available to nonresidents. • Resident big game license $20. • Nonresident big game hunting license $155. • Resident fishing license $10. • Nonresident fishing license $25. N.D. CENT. CODE § 20.1-03-12 (3) (4) (6) and (7).

Oklahoma	Limits, if no reciprocal agreement in place.	Allows nonresidents to purchase licenses unrestricted if the nonresident state allows Oklahoma residents to purchase licenses unrestricted. No deer, elk, or antelope licenses can be issued to a resident of another state that does not allow Oklahoma residents to purchase general, unrestricted non-resident licenses. 29 OKLA. STAT. tit. 29 § 4-112 (C) (1) (d) (2003).	**Yes.** Not all licenses available to residents are available to nonresidents. • Resident deer license, gun $15.75. • Nonresident deer license $200. • Resident elk license $34.25. • Nonresident elk license $250. 29 OKLA. STAT. tit. 29 § 4-112 (C) (1) and (3).
Oregon	Limits	Nonresident percentage caps in big game hunts. OR. REV. STAT. § 497.112 (7) (8) and (9)(2001).	**Yes.** Resident and nonresident licenses comparable. Fee examples: • Resident elk license $28. • Nonresident elk license $305.

			• Resident deer license $13. • Nonresident deer license $190. OR. REV. STAT. § 497.112 (1) (a), (b), (d) and (e) (2001).
Pennsylvania	Limits	• Nonresidents limited to 10% of elk licenses. 58 PA. CODE § 143.203(b) (2002). • Most permits may only be issued to residents, 34 PA. CONST. STAT. § 2901 (a) (2002).	**Yes.** Most licenses not available to nonresidents. Fee examples: • Resident elk license $25. • Nonresident elk license $250. • Resident antlerless deer $5. • Nonresident antlerless deer $25. 34 PA. CODE § 2709 (a) (5) and (21).
South Carolina	None		**Yes.** Not all licenses available to nonresidents comparable to licenses available to residents.

			Examples of fees: • Resident statewide hunting license $12. • Nonresident statewide hunting license valid July 1 through June 1 $100. • Resident big game permit $6. • Nonresident big game permit $89. S.C. CODE ANN. § 50-9-510 (1) (6) (9) and (10) (2001).
Tennessee	None		**Yes.** Some Resident and nonresident licenses not comparable. Fee examples: • Resident combination hunting and fishing $20 TENN. CODE ANN. § 70-2-201 (a) (1) (A) (2002).

			• Nonresident all game $155. TENN. CODE ANN. § 70-2-202 (a) (1) (A) (i) (b) (2002). • Resident fishing – county of residence $5 TENN. CODE ANN. § 70-2-201 (a) (1) (E) (2002). • Nonresident fishing all species $50 TENN. CODE ANN. § 70-2-202 (a) (1) (A) (iii) (b) (2002).
Texas	None		**Yes.** Not all licenses available to residents are available to nonresidents. Resident and nonresident licenses not always comparable. Fee examples: • Resident hunting (all animals except alligator) $19.

			• Nonresident hunting (all animals except alligator) $250. 31 TEX. ADMIN CODE § 533; TEX. PARKS & WILD. CODE §§ 42.002, .005. (a) (1), (5). • Resident fishing $19 • Nonresident fishing $30. TEX. PARKS & WILD. CODE ANN § 53.3 (c) (1) and (6)
Utah	Limits	Nonresident restrictions consist of 10% cap on nonresident licenses sold when only a set number of licenses may be issued. Decisions on restrictions made annually by proclamation of Utah Wildlife Board. Division web page, Wildlife Board proclamations: http://www.wildlife.utah.gov	**Yes.** Not all licenses available to residents are available to nonresidents. Example: • Resident deer (general) $35 • Nonresident deer (general) $208 • Resident elk license, archery, any bull $60

			• Nonresident elk license archery, any bull $333 Division web page, permits: http://www.wildlife.utah.gov • resident fishing (under 65) – $23.75 • Nonresident fishing (any age) – $45.75 UTAH CODE ANN. § 23-19-40 (1).
Vermont	Limits	• Nonresident permits for antlerless deer limited to 10% of total antlerless permits issued. Fish and Wildlife board sets limits on number of antlerless permits issued. VT. STAT. ANN. Tit.10 § 4081 (2002) and Fish and Wildlife Board Regulation Number 911. • 10% set aside for nonresident moose permits. VT. STAT. ANN. Tit.10 App. § 33 (2002) and Fish	**Yes.** Nonresident and resident licenses fairly comparable. • Resident big game muzzle loader license $17. • Nonresident big game muzzle loader license $25. • Resident fishing license $20

		and Wildlife Board Regulation Number 1000.	• Nonresident fishing license $41. VT. STAT. ANN. Tit.10 § 4255 (a) and (b).
Virginia	Limits	• No limits on numbers of nonresident licenses. Nonresidents must purchase license not required of residents to hunt within shooting preserve. VA. ADMIN. CODE § 29.1-304 (2002).	**Yes.** Resident nonresident and resident licenses fairly comparable. Some short term nonresident licenses. • Resident license for bear, deer and turkey (available by special license only) $25. • Nonresident license for bear, deer and turkey (available by special license only) $150. VA. CODE ANN. § 29.1-305 (B) (2002). • Resident fishing license $12.

			• Nonresident fishing license $30. VA. CODE ANN. § 29.1-310 (A) (1) and (2) (2002).
Washington	None		**Yes.** Nonresident and resident licenses comparable. Fees: • Resident deer, elk, bear, and cougar license $66 • Nonresident deer, elk, bear, and cougar license $666 • Resident elk only $20 • Nonresident elk only $200. WASHINGTON REV. CODES § 77.32.450 (1) (a) and (2) (a) (2002).

West Virginia	Limits	• Nonresidents may not hunt antlerless deer in resident only areas. Nonresident may hunt in resident areas if a resident license surplus exists. W. VA. CODE § 20-2-46b (2002). • Residents only may hunt wild boar. W. VA. CODE § 20-2-46d (2002).	**Yes.** Resident and Nonresident licenses not comparable. Fee examples: • Resident deer license $11. W. VA. CODE § 20-2-39 (2002). • Nonresident deer license $100. W. VA. CODE § 20-2-43 (2002). • Resident turkey license $5. • Nonresident turkey license $25. W. VA. CODE § 20-2-46k (2002).
Wyoming	Limits	• Limits nonresident elk licenses to 16% with a cap of 7250. • Limits nonresident deer and antelope license to 20% of initial drawing. • Leftover licenses not limited by	**Yes.** Resident nonresident and resident licenses are fairly comparable. Fee examples: • Resident deer license $26.

		cap so annual percentage of non-resident licenses varies each year. Wyoming Fish and Game Regulations, Chapter 44, http://soswy.state.wy.us/rules/search.htm.	• Nonresident deer license $311. • Resident elk $26. • Nonresident elk with fishing privileges $676. WYO. STAT. ANN. § 23-2-101 (f) (i) and (ii), (h) and (j) (xiii) (xiv) and (xviii) (2002).